Judicial Profile: Michael P. McCuskey
Chief Judge of the Central District of Illinois

Michael P. McCuskey has had a distinguished career in the law, having served the Central Illinois area as both a lawyer and judge since 1975. Judge McCuskey is a 1970 graduate of Illinois State University, and a 1975 graduate of St. Louis University School of Law. After his graduation from law school, Chief Judge McCuskey entered private practice in Lacon, Illinois where he maintained a general practice focusing on civil litigation and trial work. Chief Judge McCuskey simultaneously served as the Chief Public Defender for the Marshall County Public Defender's Office, representing indigent clients charged with committing felony crimes, including murder, robbery, burglary, and other violent crimes.

Chief Judge McCuskey remained in private practice until 1988 when he was elected a circuit court judge in the Tenth Judicial Circuit in Peoria County. Judge McCuskey's tenure in the circuit court was short lived, however, due to his election as Justice of the Third District Appellate Court in 1990. At that time, Chief Judge McCuskey was the youngest person to serve as a Justice anywhere in the Illinois appellate court. During his tenure in the Third District, Chief Judge McCuskey authored hundreds of opinions in a wide range of civil and criminal matters. Chief Judge McCuskey served on the Third District with distinction until 1998 when he was confirmed by the United States Senate to become a United States District Judge for the Central District of Illinois. Chief Judge McCuskey was nominated to the federal bench by President Clinton to fill a vacancy created when Chief Judge Harold A. Baker assumed senior status. Chief Judge McCuskey received his commission on April 3, 1998 and has served in the Urbana Division ever since. In December 2004, Chief Judge McCuskey assumed the duties of Chief Judge of the Central District. In that role, he is responsible for overseeing the administrative functions of all the divisions comprising the Central District of Illinois, including Danville, Peoria, Quincy, Rock Island, Springfield, and Urbana.

Earlier this summer, Chief Judge McCuskey served on a panel of federal judges from the Central and Southern Districts of Illinois for the ISBA's presentation Handling Civil Matters from Pleadings to Appeal and Special Considerations for Federal Practice, which provided lawyers helpful hints on how to handle civil cases in federal court. Wanting to elaborate on thoughts that he shared with the participants at that seminar, Chief Judge McCuskey agreed to be interviewed for this article to further guide civil practitioners, particularly lawyers who do not frequently appear in federal court, on how to avoid common and avoidable mistakes that Chief Judge McCuskey sees occur more often than necessary in federal court. The following are highlights of key issues raised by Chief Judge McCuskey.

Magistrate Judges Play a Vital Role In The Management of Civil Cases

The important thing that civil practitioners need to understand about federal court is that, unlike state court, their assigned district court judge has both a civil and criminal docket, which means that the Speedy Trial Act causes criminal trials to take priority over trial dates in civil cases. Because many of the divisions have only one active district judge with a large criminal

docket, the civil cases will primarily be handled by the assigned magistrate judge for all pre-trial matters, sometimes including pre-trial conferences. As a result, all of the district judges work very closely with the magistrate judges to ensure that we implement and follow procedures intended to streamline civil cases. All of our magistrate judges are highly competent professionals with a wealth of experience who come from both private and governmental practices and, in some cases, the state appellate court. They are just as bright and talented as the district judge and are probably not district court judges simply because of the "luck of the draw." So parties should not feel that they are getting short changed merely because so much of the pre-trial case management is handled by the magistrate judge. Furthermore, parties should understand that because of the high caliber of our magistrate judges and the active trial calendars of the district court judges, parties should not expect the presiding district court judge to routinely entertain motions to overturn the reports and recommendations of magistrate judges in non-dispositive matters. That is particularly true with respect to discovery disputes. I can guarantee you that lawyers do not want to bring a discovery dispute to me after already getting a ruling from the magistrate judge. That is because, absent significant circumstances, I am hard-pressed to imagine a situation where I would likely disagree with a discretionary discovery ruling entered by a magistrate judge. Also, under 28 U.S.C. §636(B), I can only overturn a magistrate judge's ruling when it is "clearly erroneous or contrary to law." Just because I might have exercised my discretion differently—and there are not too many times when I am likely to exercise that discretion differently since Judge Bernthal and I have similar approaches to many of the discovery disputes that arise in our cases—that is not a basis for overturning a magistrate's ruling. That said, lawyers should think twice before bringing a discovery dispute to me.

Read The Local Rules!

The Central District has spent a lot of time and effort formulating local rules to cover many of the routine issues that arise in civil cases, and even provide special instructions for specific types of cases, including social security appeals, prisoner condition cases filed against the State of Illinois, and habeas corpus cases. So many of those cases are filed in the Central District that we have created specific rules and procedures to ensure that routine issues do not clog the courts or delay prompt resolution of the case.

Plaintiff's counsel filing in the Central District, especially those who are removing from state court and/or invoking diversity jurisdiction under 28 U.S.C. §1332, need to pay close attention to the Seventh Circuit's admonition about carefully pleading the citizenship of all of the parties, including corporations and partnerships. Simply alleging the residence of a single defendant and/or omitting references to the citizenship of each partner when suing a partnership can be grounds for sua sponte remand to state court—and orders remanding cases back to state court typically are not reviewable by the court of appeals. You should also be mindful that Local Rule 40 specifies that each division can only accept new case filings from the counties to which the division is specifically assigned. A personal injury claim arising from an accident in Champaign County should not be filed in Rock Island or vice versa. Parties are going to get the same high quality of justice wherever their case is pending, and the quality of justice dispensed does not vary by division or judge. I can promise you that the district judge who initially gets your case will be unhappy if the attorneys of record are engaging what the judge perceives to be forum or judge shopping.

Summary Judgment is Not A "Drastic Remedy" In Federal Court

I see many lawyers who customarily practice in state court underestimate the seriousness of summary judgment in federal court and/or the stringent briefing requirements that are imposed in filing a federal court summary judgment motion. Being a former state court judge, I am familiar with the Illinois Supreme Court's refrain about how summary judgment is a "drastic remedy." While that might be true in state court, the Seventh Circuit takes a totally opposite position on summary judgment and often characterizes it as an effective tool in administering the civil docket. In other words, federal courts are highly receptive to motions for summary judgment and lawyers are doing themselves and their clients a huge disservice if they underestimate the seriousness of summary judgment in federal court. In fact, I recall an instance earlier in my time on the federal bench when the Seventh Circuit reversed me after I did not grant summary judgment in favor a party, even after I had entered a judgment on a jury verdict. I mention that to emphasize just how receptive federal court is to summary judgment and how the Seventh Circuit, unlike the Illinois Supreme Court, does not view the granting of summary of judgment with inherent suspicion.

Lawyers ought to remember that the purpose of summary judgment is to enter a judgment when there is no genuine issue of material fact. A material fact is one that affects the outcome of the case under controlling case law. This means that lawyers really need to focus on understanding what facts that they need to establish in discovery in order to win or defeat a motion for summary judgment based on the material facts. Our local rules require the moving party to identify the controlling law and the material facts in their opening brief so that the judge can determine whether the moving party has met their burden. Conversely, the non-moving party is supposed to: respond to each material fact identified by the moving party, show that the fact is disputed or otherwise inadmissible from consideration, and, therefore, establishes that summary judgment should be denied.

Unfortunately, lawyers often file motions for summary judgment that either do not contain a short, plain and concise statement of undisputed material facts (as required under the local rule) or contain rambling briefs that do not address the material legal issues. That will not suffice and lawyers should not be surprised if the court denies the motion outright for failure to follow the local rule. Likewise, when a non-moving party fails to follow the local rule when responding to the moving party's statement of facts, the consequence is the moving party's statement of facts is deemed admitted, which typically guarantees that summary judgment will be granted. The Seventh Circuit has published numerous cases affirming the practice of deeming uncontested facts admitted and to be a legitimate basis for entering summary judgment, provided the moving party still establishes that they are entitled to judgment as a matter of law. In short, lawyers should not expect their presiding judge to simply deny a summary judgment motion simply because lawyers file briefs that "argue" about the existence of some factual disputes. It is incumbent upon the lawyer, under the local rules, to provide pinpoint citation to the facts, explain how the facts are material to the outcome of the case and how they are disputed or undisputed, depending, of course, on whether you are trying to win or defeat summary judgment. Lawyers who understand and follow these rules will be more successful at the summary judgment stage.

Be Prepared, Diligent, and Set Realistic Client Expectations

It should go without saying that all lawyers are expected to be prepared and should diligently prosecute or defend their cases without delay. Scheduling orders are routinely entered early in all newly filed cases under Fed. R. Civ. P. 26(f). Once those dates are entered, they are rarely moved absent showing good cause. Failing to take depositions or propound interrogatories and/or documents requests until the last month of discovery is not "good cause." Judges appreciate that discovery often triggers settlement discussions, but too often, that does not happen until the eve of trial after summary judgment has been denied, or a key discovery motion has been lost. The better approach is to diligently evaluate the value of your case early. The most important skill for a lawyer is to be capable of realistically evaluating the merits of a case. Not too many are capable of doing it, or limit their evaluation to drafting a bare bones complaint, file it, and then do nothing until just before or after discovery closes. Lawyers that do that with me quickly learn that I expect the pre-trial order to be promptly prepared and delivered to me so that we can convene the pre-trial conference and get the case set for trial. The pre-trial conference is not the ideal time to learn about your case for the first time. And if you do settle on the eve of trial, notify the clerk immediately. I schedule trial dates to commence promptly on Monday, which means that the clerk's office will already have the jury pulled by the preceding Friday. If we do not receive sufficient notice prior to the trial date, the Court will enter fines to cover the cost of convening the jury, as provided for under the local rules. The moral of the story is that lawyers who read the local rules will have fewer problems and are likely to enjoy greater success in federal court.

Copies of the local rules and court forms for the Central District of Illinois can be found on the Court's Web site at www.ilcd.uscourts.gov.